

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 03-07
(November 20, 2003)

**Ethical Limitations on Court Employee's Service
as a Certified Legal Document Preparer**

Issue

May a judicial employee work as a certified legal document preparer (CLDP) without running afoul of the Code of Conduct for Judicial Employees?

Answer: Yes, but only under very limited circumstances.

Facts

A juvenile probation officer has been certified as a legal document preparer and inquires whether she can work as a document preparer in the evenings and on weekends.

Discussion

The Supreme Court of Arizona recently established a certification process for legal document preparers. The Arizona Code of Judicial Administration, Part 7, Chapter 2, § 7-208, authorizes CLDPs to engage in the following activities:

- a. Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public in any legal matter when that entity or person is not represented by an attorney;
- b. Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies;
- c. Provide general factual information pertaining to legal rights, procedures, or options available to a person in a legal matter when that person is not represented by an attorney;
- d. Make legal forms and documents available to a person who is not represented by an attorney; and
- e. File and arrange for service of legal forms and documents for a person in a legal matter when that person is not represented by an attorney.

Determining whether a judicial employee may work as a CLDP outside normal court hours requires consideration of several provisions of the Code of Conduct for Judicial Employees (employee code). One of the over-arching principles articulated throughout the employee code and its commentary is the necessity of a fair and independent court system that inspires public confidence and trust. *See, e.g.*, Preamble; Canon 1; Canon 2.

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More specifically, Canon 3E limits the legal assistance that a judicial employee may provide. It states: “Judicial employees may assist citizens in identifying available procedural options and in understanding and complying with court procedures. Judicial employees shall not advise a particular course of action.” The commentary to Canon 3E provides:

Employees may assist citizens, consistent with the court’s resources, with matters within the scope of their responsibilities and knowledge. This assistance may include providing information contained in court records; furnishing examples of forms or pleadings; explaining court rules, procedures, practices, and due dates; and *helping to complete forms with factual information provided by a citizen*. Although a person may be informed of the options for addressing a matter, judicial employees should not advise citizens whether to take a particular course of action or attempt to answer questions outside their knowledge and experience. In performing their official duties, employees should not recommend the names of private attorneys to the public unless the employee works in a court-approved lawyer-referral program, but may refer members of the public to bar associations or legal aid organizations (emphasis added).

In many respects, the authorized activities of a CLDP and the restrictions imposed on judicial employees by Canon 3E and its commentary are consistent. Unlike judicial employees, however, CLDPs are not restricted to merely “helping to complete forms with factual information provided by a citizen.” Rather, a CLDP may independently select, provide, and complete legal documents for use by others. CLDPs exercise discretion and judgment in selecting forms that are appropriate for an individual’s specific legal needs and in completing those documents based on their knowledge and training. A CLDP is not a mere scrivener. Indeed, as recognized by Rule 31(a)(2)(A), Rules of the Supreme Court, CLDPs are engaged in the practice of law.

The pending inquiry is distinguishable from assistance provided by some courts to self-represented litigants through, *inter alia*, self-service centers. Self-service center staff occasionally serve as scriveners for litigants who cannot complete forms and who request assistance as an accommodation due to a disability. However, staff members do not use their independent judgment, discretion, or training in completing the forms; they write down the words dictated by the litigant. As contemplated by the commentary to Canon 3E, these staff members are merely “helping to complete forms with factual information provided by a citizen.” Additionally, because they are not acting as CLDPs, self-service center employees need not identify themselves on the paperwork filed with the court, thus obviating another of the concerns addressed below.

An additional hurdle is posed by Canon 4, which requires judicial employees to “so conduct their outside activities as to minimize conflicts with their employment responsibilities.” Canon 4B specifically prohibits any business activity or secondary employment that:

- (1) Involves an organization or a private employer that regularly conducts business with the court;

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- (2) Is conducted during the employee's normal working hours;
- (3) Places the employee in a position of conflict with his or her official role in the judicial department;
- (4) Requires the employee to appear regularly in judicial or administrative agency proceedings;
- (5) Identifies the employee with the judicial department or gives an impression the employment or activity is on behalf of the judicial department; or
- (6) Requires use of court equipment, materials, supplies, telephone services, office space, computer time, or facilities.

The pending inquiry most directly implicates subparagraphs (1) and (5) of Canon 4B. Unless a CLDP confines his or her practice to administrative matters, non-judicial proceedings, or judicial proceedings before another court, by definition, a CLDP “regularly conducts business with the court.” Canon 4B(1). The commentary to Canon 4B specifically prohibits certain types of secondary employment where ongoing contact with the court is likely: “In order to avoid any employment that is in conflict with a judicial employee’s official role within the judiciary, a judicial employee should not, for example, work for a police department, public defender, or prosecutor.” Additionally, there is a substantial and foreseeable risk that a judicial employee who also works as a CLDP may give the impression that “the employment or activity is on behalf of the judicial department.” Canon 4B(5). While it would clearly be improper for a CLDP to hold himself out as a judicial employee, even absent such self-promotion, consumers may assume that the CLDP’s primary employment with the court will somehow benefit them in their legal matters. Conversely, a party that is adverse to the CLDP’s “client” might well believe that the adversary will receive preferential treatment and consideration by the court. *See* Canon 2C commentary (“To gauge the propriety of an action, employees should consider how opposing parties and counsel are likely to view the situation.”). *See also* Canon 4C (judicial employees must “manage personal and business matters so as to avoid situations that may lead to conflict, or the appearance of conflict, in the performance of their employment.”).

Another potential conflict arises when a CLDP’s work is reviewed by the court. Even before the advent of certified legal document preparers, judges would occasionally find that documents prepared by a non-lawyer on behalf of a party were deficient, unnecessary, or otherwise inappropriate for that party’s specific legal situation. Now, a CLDP must list his or her name on all documents prepared for others:

[A] certified legal document preparer shall include the legal document preparer’s name, the title “Arizona Certified Legal Document Preparer” or the abbreviation “AZCLDP,” and the legal document preparer’s certificate number on all documents prepared by the legal document preparer that are filed in an Arizona court or tribunal. The legal document preparer shall also provide their title and certificate number upon request.

Ariz. Code of Judicial Admin., pt. 7, ch. 2, § 7-208 (F)(3).

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The appearance of a conflict exists when a judge reviews a document that he or she knows was prepared by a judicial employee. Moreover, a judge could be faced with the prospect of criticizing an employee of his or her own court or with forwarding a disciplinary complaint about such an individual to the Board of Legal Document Preparers. If a judge believed that a document was filed in violation of Rule 11, Ariz.R.Civ.P., or that its filing constituted an attempted fraud on the court or another party, the CLDP could be compelled to testify before the court.

The foregoing ethical concerns generally will preclude a CLDP/court employee from providing or preparing any legal documents when their filing or use in proceedings before his or her court is likely or distinctly possible. Such concerns, however, do not necessarily exist in all areas for which a CLDP's services might be utilized. For example, judicial employees who are CLDPs may prepare documents that are not intended for use in court proceedings and may provide general legal or factual information to others when such services are unrelated to any pending or potential litigation. They may also prepare documents for use in a court other than the employing court. Although judicial employees may serve as CLDPs under these limited circumstances, they may not hold themselves out as judicial employees and must make reasonable efforts to insure that CLDP clients do not expect to receive preferential treatment by virtue of the CLDP's judicial employee status.

Lastly, we note that the employee code sets out "minimum standards. . . [that] do not preclude the adoption of more rigorous standards by law, court order or local rule." Preamble, Code of Conduct for Judicial Employees. Although this opinion provides that court employees may *ethically* engage in secondary employment as certified legal document preparers in limited situations, it does not give court employees *a right* to such employment. Depending on local needs and conditions, court officials may still adopt policies further limiting or prohibiting such employment.

Applicable Code Sections

Code of Conduct for Judicial Employees, Preamble, Canons 1, 2, 3 and 4 (1997).

Other References

Arizona Code of Judicial Administration, Part 7, Chapter 2, § 7-208.

Rule 31(a)(2)(A), Arizona Rules of the Supreme Court.